

DOCKETED
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OCT 15 1979

FILED

BALLY MANUFACTURING CORPORATION,

Plaintiff,

Civil Action
No. 78 C 2246

-against-

D. GOTTLIEB & CO. and WILLIAMS ELECTRONICS,
INC., & ROCKWELL INTERNATIONAL CORPORATION,

Defendants.

530 Fifth Avenue
New York, New York 10036
August 1, 1979
10:00 o'clock a.m.

EXAMINATION BEFORE TRIAL of LOUIS J. NICASTRO,
taken by the Plaintiff, pursuant to Court Order dated
July 25, 1979 and subpoena, held at the time and place
stated above before Shirley Van Wyckhouse, a Notary Public
of the State of New York.

APPEARANCES:

FITCH, EVEN & TABIN
Attorneys for Plaintiff
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Chicago, Illinois 60603
BY: A. SIDNEY KATZ, ESQ., Of Counsel
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2 APPEARANCES:

3 GOLENBOCK & BARELL

4 General Counsel for Defendant Williams Electronics,
Inc.

5 645 Fifth Avenue

6 New York, New York

7 BY: ARTHUR HANDLER, ESQ., Of Counsel

8 McDougall, Hersh & Scott, ESQS.,

9 Attorneys for Defendant Williams Electronics,
Inc.

10 135 South LaSalle Street

11 Chicago, Illinois 60603

12 BY: MELVIN M. GOLDENBERG, ESQ., Of Counsel

13 * * *



1
2 MR. KATZ: Off the record, we have
3 reached a stipulation that there is no waiver
4 of signature; that the witness will have the
5 opportunity to read the transcript but that he
6 may sign it before any Notary Public.

7 Is that agreeable?

8 MR. HANDLER: Yes, it is, Mr. Katz.

9 MR. KATZ: And that copies of documents
10 may be substituted for the original document
11 except to the extent that errors be shown.

12 MR. HANDLER: That is correct.

13 I would add that there is an additional
14 stipulation and understanding that the copies
15 of the depositions will not be filed until
16 the attorneys for the parties have had a chance
17 to review them and designate those things which
18 they consider to be business confidential, and
19 I think that should apply to this deposition
20 just as well.

21 MR. KATZ: Yes, we agree.

22 This deposition is being taken pursuant
23 to a Court Order approved as to form by the parties,
24 and which I would like to have the Reporter
25 mark to be formed as part of this record as

1 Plaintiff's Exhibit BD 42.

2
3 MR. HANDLER: Mr. Katz, I have just looked
4 through my legal file. I happen to have a
5 copy of the filed Court Order signed by the
6 Judge and I would offer to -- if you could have
7 a Xerox made, you could have that marked as an
8 exhibit.

9 MR. KATZ: Fine. We'll have that marked
10 as Plaintiff's Exhibit BD 42, and that Order
11 was originally based on a subpoena duces tecum
12 served on the witness which I would like to
13 have marked as Plaintiff's Exhibit BD 43.

14 (Copy of Court Order was
15 marked Plaintiff's Exhibit
16 BD 42 for identification,
17 as of this date.)

18 (Subpoena duces tecum
19 was marked Plaintiff's
20 Exhibit BD 43 for identi-
21 fication, as of this date.)

22 MR. HANDLER: Can I interrupt you first,
23 please?

24 MR. KATZ: Yes.

25 MR. HANDLER: Before you begin your
first question, I would like to know whether or
not, in addition to yourself, Mr. Welsh and

1
2 Mr. Schnayer, any other attorneys will be
3 attending this deposition.

4 MR. KATZ: An additional attorney may be
5 attending, a Miss Joan Hall or a Mr. Keith
6 Bode may attend at some point.

7 MR. HANDLER: I would like to call your
8 attention to an affidavit which was filed by
9 Leonard J. Santisi, S-a-n-t-i-s-i, before
10 Judge Sand in opposition to my motion made on
11 behalf of the witness, Mr. Nicastro, for an
12 adjournment of this deposition which was
13 originally scheduled for the 25th of July.

14 I would like to call your attention to that
15 part of the affidavit which cites as a ground
16 for opposing the application for an adjournment,
17 the fact that a number of attorneys had made
18 plans to attend this deposition and that was
19 the reason for opposing the application for an
20 adjournment.

21 Mr. Santisi's affidavit, which he swore
22 to on the 24th of July, in paragraph 12 makes
23 reference to the fact that Mr. Keith Body of
24 Golenbock, General Counsel for the Plaintiff
25 in Chicago had made arrangements to come to

1
2 New York to appear in this deposition.

3 Mr. Santisi also swore that another lawyer
4 by the name of John Lynch and/or Wayne, W-a-y-n-e
5 Harding, H-a-r-d-i-n-g from Arnold, White &
6 Durkee in Houston, Texas would be attending.

7 He also swore that a Mr. Gerson Meyers,
8 G-e-r-s-o-n, M-e-y-e-r-s of Dressler, Goldsmith,
9 Clement, Gordon & Shore, Ltd. in Chicago,
10 Illinois would be attending.

11 MR. KATZ: And do you know whether they
12 will be attending?

13 MR. HANDLER: Well, I don't see them in the
14 room and I was just inquiring as to whether or
15 not they will be here.

16 MR. KATZ: We do expect them to be here.
17 We do expect one or more attorneys from Golenbock
18 to be attending.

19 MR. HANDLER: If the occasion should arise
20 that we have to go back to the Court in the
21 Southern District of New York, I want you gentle-
22 men to know that I intend to bring Mr. Santisi's
23 apparently inaccurate statements to the attention
24 of the Court.

25 MR. KATZ: I think that it's presumptuous

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of you, sir, to characterize it as an inaccurate statement, but I think it's not very productive to go into that matter right now, while we're here to take Mr. Nicastro's deposition.

MR. HANDLER: You have my position.

LOUIS J. NICASTRO, having been called as a witness, having been first duly sworn by Shirley Van Wyckhouse, a Notary Public of the State of New York, testified on his oath as follows:

EXAMINATION

BY MR. KATZ:

Q Mr. Nicastro, would you state for the record your first, middle and last name?

A Louis, L-o-u-i-s- J., middle initial, Nicastro, "N" as in Nicholas, -i-c-a-s-t-- as in Thomas, -r-o.

Q Does the "J" stand for a middle name?

A Yes, Joseph.

Q What is your present address?

A Mill Neck, New York.

Q Your street address?

A It's Cleft Road.

Q Mill Neck?

1 A Yes, C-l-e-f-t Road.

2 Q Mill Neck is in Long Island; is that correct?

3 A Yes, that is correct.

4 Q Have you ever been known by any other name
5 or names?

6 A No, sir, not to my knowledge.

7 Q Have you ever been known by the name Louis J.
8 Manzoni --

9 A No, sir.

10 Q -- M-a-n-z-o-n-i?

11 A No, sir.

12 Q How long have you resided at the Cleft Road
13 address?

14 A I purchased the house in 1969.

15 Q And you've resided there since that date?

16 A Well, I think that -- I bought the house in '69,
17 it took a year and a half to renovate and I think we
18 actually moved in July of '70, but I'm not sure exactly
19 whether it was July or August.

20 Q Prior to that time, you resided in Glenview,
21 Illinois; is that correct?

22 A Yes, that is correct.

23 Q By whom are you presently employed?

24 A Xcor International Incorporated.

3 Q In what capacity or position?

4 A Chairman and chief executive officer.

5 MR. KATZ: You're raising your hand,
6 Mr. Handler?

7 MR. HANDLER: I don't want to interrupt
8 your questioning, but I would like to confer
9 with the witness for one moment, please, before
you go on to your next question.

10 MR. KATZ: Sure.

11 (Mr. Handler conferring with witness)

12 MR. HANDLER: Mr. Katz, I think that the
13 witness, in fairness to you in having a complete
14 record, ought to supplement his prior answer.

15 Will you do that, Mr. Nicastro.

16 A (Continuing) I also hold the title of Chairman
17 of Williams Electronics, Incorporated, as well as others,
18 I mean, but that's, you know, that's the one that I think
19 that you would be most interested in.

20 Q What is the business address of Xcor International?

21 A 2001 Spring Road, Oakwood, Illinois.

22 Q Is that the headquarters address?

23 A Yes, sir.

24 Q And does Xcor International have a business
25 address in New York City?

2 A It has an office here, yes.

3 Q What is the office address in New York?

4 A 375 Park Avenue.

5 Q Is Williams Electronics, Incorporated a wholly-
6 owned subsidiary of Xcor International?

7 A Yes, sir.

8 Q And you indicated that you were Chairman of
9 the Board of Williams Electronics, Incorporated; is that
10 correct?

11 A That is correct.

12 Q Do you hold any other position in Williams
13 Electronics, Incorporated?

14 A Not to my knowledge.

15 Q What are the other subsidiaries -- wholly-owned
16 subsidiaries of Xcor International?

17 A Well, starting from the far west, a company
18 called Benge Trumpet, Inc., I believe, in Anaheim, California.

19 In Minneapolis, Minnesota, a company called Qualitone
20 Hearing Aid, Inc.

21 In Chicago, as you know, Williams Electronics,
22 Inc. ~~is a subsidiary of Xcor International at one time?~~

23 A In Elkhart, Indiana, the DeFord Flute Company.
24 Now whether it's incorporated, company or what, I don't

25 remember.

Nicastro

10

Inc.

In Cleveland, Ohio, King Musical Instrument,

Inc.

In Arlington Heights, Ohio, Front Row Theater,

In Hartford, Connecticut, Choice Vend, Inc.,
that is two words.

In Paris, France, a company called S.M.L.

And in Zurich, Switzerland, a company called

Serose, that's S-e-r-o-s-e Holding, Ltd. -- Holding -- T

don't know whether it's AG or -- but whatever the appropriate equivalent to "incorporated" is there, that is what it is.

Q Do any of these subsidiaries manufacture or sell pinball machines?

A No.

Q Does Williams Electronics, Inc. manufacture
or sell --

A Yes.

Q -- pinball machines?

A Yes.

Q Was The Seeburg Corporation or Seeburg Corporation aware a subsidiary of Xcor International at one time?

A It was a predecessor company at one time, Seeburg
ries.

Not Seeburg Industries, Seeburg Corporation of

2 Delaware.

3 A Seeburg Corporation of Delaware was a sub-
4 sidiary of Seeburg Industries which is probably now
5 referred to as Xcor Corporation, but I'm not one hundred percent
6 sure of that.

7 Q And --

8 A It's Xcor International, the parent, Xcor
9 Corporation, which is the equivalent to Seeburg Corporation
10 of Delaware.

11 Q So is there still a subsidiary, Seeburg
12 Corporation of Delaware?

13 A No. The name change had taken place, as you
14 know, from Seeburg Industries to Xcor International.

15 Simultaneously and concurrently with that,
16 what was known as Seeburg Corporation of Delaware was
17 changed to Xcor Corporation.

18 Q When did that occur?

19 A Oh, I don't know, I don't remember.

20 Q Within the last year?

21 A I don't know.

22 If you have it before you there (indicating) --

23 MR. HANDLER: The witness said that he
24 didn't know.

25 Q Is there a subsidiary of Xcor International

2 by the name of Sega, S-e-g-a SA in Spain?

3 A No, sir.

4 Q Do you know if Xcor International ever had as
5 a subsidiary, either wholly-owned or partly owned, the
6 company Sega SA in Spain?

7 A The answer is yes, it did have an interest in
8 Sega in Spain.

9 Q And when was that?

10 A It was terminated -- I'm guessing now, Mr. Katz,
11 in 1975 our partnership terminated.

12 Q That was a partnership relationship with
13 Sega?

14 MR. HANDLER: Just a minute.

15 I'm not sure that the witness understood
16 your prior question.

17 As I understood your prior question it
18 was, this company that you inquired about in
19 Spain, at any time did Xcor own, either wholly
20 or in part, a subsidiary by the name of Sega.

21 Was that your question?

22 MR. KATZ: Xcor International --

23 MR. HANDLER: -- owned a subsidiary by the
24 name of Sega in Spain --

25 MR. KATZ: Right.

2 MR. HANDLER: -- all right.

3 MR. KATZ: In whole or in part.

4 MR. HANDLER: -- in whole or in part,
5 okay.

6 (Mr. Handler conferring with witness)

7 MR. HANDLER: The witness has indicated
8 to me that he really didn't understand your
9 question.

10 Would you put the question to him again,
11 please, and spell the name of the company?

12 I think that the witness is confused as to
13 your question.

14 MR. KATZ: Okay, I think that I just
15 spelled it, but it was Sega, S-e-g-a and I
16 asked whether Xcor International ever had that
17 company as a subsidiary, either wholly or
18 in part.

19 THE WITNESS: May I talk to my counsel
20 for a minute?

21 MR. KATZ: Sure.

22 (Witness conferring with Mr. Handler)

23 MR. GOLDENBERG: While the witness is
24 doing that, I would like to enter an objection
25 that I do not see that this line of inquiry is

2 relevant or reasonably calculated to lead to a
3 discovery of admissible evidence in this
4 lawsuit.

5 A The answer is no, that Xcor never -- never owned
6 or had a partnership interest in a company called Sega,
7 S-a-g-a.

8 MR. HANDLER: S-e-g-a.

9 A (Continuing) S-e-g-a, I'm sorry.

10 Q Did it have a partnership relationship with
11 Sega, is that what you were referring to before?

12 A No, there is a company --

13 Q All right, so you were referring to a different
14 company --

15 A Right.

16 Q -- Segasa --

17 A That is exactly right.

18 Q -- S-e-g-a-s-a.

19 MR. GOLDENBERG: I would like the record to
20 show that I have a running objection to this
21 line of inquiry for the reason stated, that I
22 don't see what any of this has to do with whether
23 or not the patent in this suit is valid or
24 infringed.

25 MR. KATZ: At the appropriate time, I think

2 we would be able to demonstrate clear relevance
3 in this inquiry.

4 MR. GOLDENBERG: Until and unless.

5 Q Then were your answers --

6 A No to Sega.

7 Q --- assuming that I was saying "Segasa" instead
8 of "Sega," whether you have a -- let me ask you the question
9 again then, for the sake of clarity in the record.

10 Did Xcor International have a subsidiary
11 by the name of Segasa at any time?

12 A At any time?

13 Q Yes.

14 A It had an interest in -- a fifty percent interest
15 in Segasa.

16 It did not have an interest in Sega.

17 Q And is Segasa a Spanish company also?

18 A I don't know that Sega is a Spanish company.

19 Q Is Segasa a Spanish company?

20 A Segasa is a Spanish company.

21 Q When did Xcor International, or its predecessor,
22 acquire the fifty percent interest in Segasa, approximately
23 what year?

24 A I would have to guess only, Mr. Katz, and say
25 that perhaps sometime in '73, '74, but I'm not sure of that.

2 (Ms. Joan Hall entered the room)

3 MR. KATZ: Let's take a recess for a
4 moment and introduce Joan Hall to everyone.

5 (Discussion off the record.)

6 BY MR. KATZ:

7 Q. Mr. Nicastro, you indicated then that you believe,
8 to the best of your recollection, that Xcor International
9 acquired a fifty percent interest in Segasa in '73 or '74;
10 is that correct?

11 A. Yes, that is an approximation, yes.

12 Q. And on --

13 A. As a matter of fact, to be specific, I think
14 that Williams Electronics acquired the interest and not
15 Xcor, but again, I'm not one hundred percent certain of
16 that.

17 Q. Who would know?

18 A. Our attorney.

19 Q. Which attorney is that?

20 A. House counsel.

21 Q. Which attorney is that?

22 A. Unfortunately, the man that I think negotiated
23 the deal is dead, but the files would -- Al Lasky, who is
24 our new general counsel, would have the file on that, Mr.
25 Katz, and could properly inform you.



2 Q Would anybody at Williams know about the
3 interest --

4 A Oh, yes.

5 Q -- in Segasa?

6 A Yes, I'm certain that there might be some
7 people there that might know.

8 I don't know that they would know any more than
9 what is in the file, the legal file in the corporate office,
10 if you are talking about when it was purchased and so forth
11 and so on.

12 The man that did know is Sam Stern, he negotiated
13 the purchase and you're fully aware of him, I'm sure.

14 Q Was he an officer of Williams Electronics at
15 some point?

16 A Yes, he was the boss then.

17 Q He was the --

18 A The boss.

19 Q The boss?

20 A Yes.

21 Q And during what period of time was that?

22 A I think from the time that Xcor's predecessor,
23 Seeburg, purchased the company in 1964, I believe.

24 Q Now, by "Xcor's predecessor," you mean Seeburg
25 Industries, Incorporated; is that correct?

2 A No, Seeburg Corp -- The Seeburg Corporation
3 which was the predecessor to Seeburg Industries.

4 Q The Seeburg Corporation?

5 A Yes, right.

6 Q When did The Seeburg Corporation acquire Williams
7 Electronics, in 1964?

8 A Yes, that is my guess.

9 I wasn't with the company at the time, but my
10 recollection is that it was in 1964.

11 MR. HANDLER: Mr. Katz, this corporate
12 history I find very fascinating, as a historical
13 matter, and I have been pretty liberal in
14 letting you inquire into it, but I think that
15 we are reaching a point wherein I'm going to have
16 to ask you to make some sort of a demonstration
17 on the record of the relevancy of these facts
18 to any of the issues in this lawsuit.

19 MR. KATZ: Well, I think --

20 MR. HANDLER: Mr. Nicastro is an extremely
21 busy man and I really don't want him sitting here
22 wasting his time or your own.

23 MR. KATZ: I think that the circumstances
24 surrounding the acquisition of Williams Electronics,
25 the Defendant in this case, by Seeburg, the

2 parent corporation, and the people who were
3 involved and who have knowledge of what trans-
4 pired, is obviously relevant.

5 MR. HANDLER: You have in mind that the
6 witness said that that took place in 19 --

7 THE WITNESS: '64, I believe.

8 MR. HANDLER: -- '64?

9 MR. GOLDENBERG: Mr. Katz, the application
10 for this patent was filed in 1975, that is what
11 we are concerned with here, sir, is whether this
12 patent is valid and infringed.

13 This fascinating history of corporate
14 change names and acquisitions, what does that
15 have to do with that, sir?

16 MR. KATZ: All right, if anyone is
17 instructing the witness not to answer, let
18 him instruct the witness.

19 Otherwise, I intend to proceed and I don't
20 want to waste the time that we have here.

21 What I see that you doing, Mr. Goldenberg,
22 is intentionally wasting the time.

23 MR. GOLDENBERG: No, sir, I am not.

24 MR. KATZ: We could have spent this time
25 asking questions and I would have been through

2 with the subject.

3 MR. GOLDENBERG: No, sir, because by
4 taking the position that you take, that you
5 put the lawyer -- lawyers or lawyer acting for
6 the witness in the position of where they really
7 don't know with what you're dealing with, and
8 on the other hand, in -- and the matter might
9 go to court, the witness might be instructed
10 not to answer, by not stating fully ahd completely
11 the relevance of all this, perhaps that can be
12 avoided, if we're talking about wasting time and
13 doing things in a sensible fashion.

14 BY MR. KATZ:

15 Q Mr. Nicastro, is Mr. Golenbock, Justin Golenbock,
16 presently a member of the Board of Directors of Xcor
17 International?

18 A Yes, he is.

19 Q Do you know when he first became a member of the
20 Board of Directors?

21 A I'm sorry, Mr. Katz, I don't remember.

22 Q Are you a member of the Board of Directors?

23 A Yes, sir.

24 MR. HANDLER: Of what corporation, sir?

25 MR. KATZ: We're talking about Xcor

2 International.

3 Q When did you first become a member of the Board
4 of Directors --

5 A Of --

6 Q -- of Xcor International or it's predecessor?

7 A I think on December 28th, 1972 when it was
8 formed.

9 Q When Xcor International acquired Williams
10 Electronics in 1964 or so, what was the business of Williams
11 Electronics?

12 A Again, Mr. Katz, I told you that I was only
13 employed at the company in 1965.

14 The best that I can only speculate as to what
15 it was doing, it was in the business of manufacturing
16 pinball machines, to the best of my knowledge, as well
17 as shuffle alleys.

18 Q In 1965 when you became employed by Xcor
19 International, was that true?

20 A Yes, sir.

21 Q And were those electro-mechanical pinball
22 machines?

23 A You couldn't tell by me.

24 I mean to be honest with you, I don't know that
25 much about the innards of our machines, whether they be

hearing aids or pinball machines.

Q Do you consider yourself knowledgeable about the construction of pinball machines?

A No, sir.

Q Was Sam Stern president of Williams Electronics at that time, in 1965?

A I believe that he was, but again, I'm not certain.

I think -- excuse me.

(Witness conferring with Mr. Handler)

Mr. Katz, I think that it might be helpful for the record to indicate to you that when I was employed by Seeburg or Xcor's predecessor, Seeburg, I was employed as Vice President of Distributor Financing, thus I didn't get involved with anything but our customers at that time, and very rarely with any of the divisions or subsidiaries.

Q Was there ever a time when you became more informed as to what Williams Electronics was doing in particular?

A Yes, as I grew with the company, as I became Executive Vice President, as I became President of the company, and later on Chairman.

MR. HANDLER: And he's referring now to Xcor or its predecessor in giving you those

positions.

Q When did you attain those positions in the company?

A I'll give you my best estimate.

I was employed by the company on May 15th, 1965.

On or about August of '65, I became Executive Vice President, and on or about June, 1966, I became President of the company.

Q When did you say that you became Chairman?

A I think that I became Chairman --

MR. HANDLER: Of Xcor.

THE WITNESS: No, -- well, or it's predecessor.

MR. HANDLER: Yes, or it's predecessor.

A (Continuing) I think -- oh, hold on.

THE WITNESS: Yes, I have to confer with my attorney.

(Witness conferring with Mr. Handler)

MR. HANDLER: The witness has indicated in an off-the-record conversation that he's having difficulty in reconstructing the precise dates and I said to him and I'm instructing him on the record to use his best estimate to give

1 you the parameters of the time.

2 MR. KATZ: Was there an outstanding
3 question?

4 THE WITNESS: I don't know.

5 MR. KATZ: Oh, yes, I asked him when he
6 became Chairman.

7 A I think I first became Chairman in August of '68.

8 MR. HANDLER: And then -- you resigned,
9 keep going.

10 THE WITNESS: I don't know when I
11 resigned.

12 Q Did you resign at some point and then --

13 THE WITNESS: Let's go off the record for
14 a moment, please, just for the sake of clarity,
15 can we?

16 MR. HANDLER: Sure.

17 (Witness conferring with Mr. Handler)

18 A I became Chairman in August of '68. When that
19 ceased to exist, Mr. Katz, I don't remember.

20 Q Had you resigned the position in and then come
21 back to the company?

22 A Yes, sir.

23 Q And when you came back, when was that date, do
24 you know?

25 Was that about in 1970?

3 A No, I think -- my guess is September of 1969,
4 at a subsidiary level now.

5 Q What subsidiary was that?

6 A That was Seeburg which was a subsidiary of
7 Commonwealth United Corporation.

8 Q Is that the jukebox company that makes jukeboxes?

9 A No, that was the entire company that I described
10 to you before.

11 Q Okay. There was another subsidiary that
12 manufactured and sold jukeboxes, Seeburg jukeboxes; is that
13 correct?

14 A Right, that was referred to as the Seeburg
15 Products Division.

16 Q But that became the Seeburg Products Division
17 of Xcor International eventually?

18 A That is correct.

19 Q And then that was sold off, is that right?

20 A No.

21 The reference that I made to the sale of
22 Seeburg was the company, in its entirety, in 1968 to a
23 company called Commonwealth United.

24 I'm not referring to the sale of the Seeburg
25 Products Division, it was the entire company, all of its
subsidiaries and divisions.

2 Q That is the company that you were referring to?

3 A Yes, right, that was sold.

4 Q All right.

5 And I had asked you whether that was the
6 juke box division and you said that was the Seeburg Products
7 Division of The Seeburg Corporation.

8 A Yes.

9 Q Now, when you came back in '69, you said that you
10 came back at a subsidiary level.

11 A Yes.

12 Q And what subsidiary was that?

13 A Seeburg.

14 Q Now, was that the juke box Seeburg?

15 A No, the entire --

16 Q That's the entire company?

17 A Yes, the entire company.

18 Q Did that become Seeburg Industries?

19 A No -- excuse me, yes --

20 Q Okay.

21 A -- after the separation from its parent.

22 MR. GOLDENBERG: My running objection still
23 runs to this entire line of inquiry.

24 Q Okay, now, this was in '69 and when you came
25 back in '69, what was your position then?

2 A My position in '69 was Chairman and President
3 of the subsidiary called Seeburg Corporation of Delaware.

4 Q Chairman and President?

5 A Yes.

6 Q How long did you hold that position, from
7 '69 through --

8 A Well, those are the dates that are vague, as
9 to how long I held those positions, because there were
10 management changes in that period of time and I can't pin
11 down for you exactly when those changes had taken place.

12 Q Okay. Did you hold any other position, such
13 as chief executive officer or chief operating officer of
14 any companies after that '69 date?

15 A After '69, yes, sir.

16 In January of 1970, I became Chairman and
17 President and chief executive officer of Commonwealth
18 United.

19 Q And what other companies after that date?

20 A And all of its subsidiaries, and don't ask me
21 all of them, because I don't remember all of them.

22 Q But it's subsidiaries included The Seeburg
23 Corporation --

24 A Among a lot of other ones.

25 All right.

3 Now, when did you first become informed of
4 the business activities of the Williams Electronics
Incorporated subsidiary?

5 A When?

6 MR. GOLDENBERG: Object to the form of the
7 question.

8 I think that that is too vague to be
9 answered in any sort of a meaningful way.

10 I think that your question is too broad.
11 I would ask you to please rephrase it.

12 MR. KATZ: Does the witness understand the
13 question?

14 MR. HANDLER: I think that the witness'
15 understanding or non-understanding is immaterial.

16 I have a request to you that you rephrase
17 your question, because I consider it legally
18 improper as to form.

19 Would you like to rephrase it?

20 MR. KATZ: Are you going to instruct the
21 witness not to answer the question?

22 MR. HANDLER: I would you to answer my
23 question as to whether you will reframe your
24 question or will you insist --

25 MR. KATZ: If the witness doesn't understand

2 it and can't answer the question, I will rephrase
3 it, but --

4 MR. HANDLER: Are you standing on your
5 question?

6 MR. KATZ: -- but if he understands it,
7 I would like the question answered.

8 MR. HANDLER: .. Are you standing on your
9 question?

10 MR. KATZ: I'll stand on my question.

11 MR. HANDLER: Impermissible as to form.

12 Direct the witness not to answer.

13 If you would like to rephrase it, you can
14 have the information that you seek.

15 MR. KATZ: You refuse to answer the
16 question, Mr. Nicastro, based on the instructions
17 of your attorney?

18 THE WITNESS: Yes, sir.

19 BY MR. KATZ:

20 Q . When were you first informed that the Williams
21 Electronics, Incorporated subsidiary was in the business of
22 manufacturing pinball machines?

23 MR. HANDLER: If you recall.

24 A Well, first of all, it was not a subsidiary,
25 to my knowledge, it was a division of The Seeburg Corporation.

and that would be in 1965.

Q Okay. And you were informed in 1965 --

A I knew of it, yes.

Q How were you generally informed?

A I was an officer of the company and an employee of the company, so, thus, I had a familiarity that any officer would have would have with its subsidiaries and/or divisions.

Q Was Mr. Stern president at that time of that division or head of the division?

A To the best of my knowledge, he was either the president or had an equivalent title, chairman or general manager or some such title.

Q Did you ever have occasion to communicate with Mr. Stern in connection with the business of Williams?

A In '65?

Q Yes.

A I think my only communications with Sam Stern at that time was probably social.

Q Did you have business communications with him later, after '65?

A Yes, after '65, as my responsibilities grew, I had communications with him, yes, of course.

What form did those communications take?

3 A Principally in the form of financial reporting,
4 monthly results, financial activities, financial requirements,
5 things such as balance sheets, profit and loss statements,
cash flow analysis, things of that nature.

6 Q Were you ever informed of product development
activities at Williams?

7 A Not to my knowledge.

8 Q Are you now informed, on a regular basis, of new
product development activities at Williams?

9 A On a regular basis, no, sir.

10 Q You are informed, though, from time to time?

11 A Occasionally I see one of our machines on the
street and/or in the factory, on a visit, and I see
machines developed, some of which don't have names or
titles or --

12 Q Are you informed on a regular formal basis within
the company as to the product developments of Williams
13 Electronics?

14 A No, sir, I'm not.

15 Q When did you first --

16 MR. HANDLER: Excuse me, Mr. Katz, in the
interest of clarity, I've understood this last
line of questions to be directed to pinball
machines and I think that that is the way that

the witness understood your question and answered.

THE WITNESS: You're not talking about hearing aids or anything like that?

MR. KATZ: No, I'm talking about Williams Electronics, Inc.

MR. HANDLER: You're talking about pinball machines, that is the way that we understood your question, sir, and that's the way that the question was answered.

MR. KATZ: Well, I wasn't talking about pinball machines, I was talking about Williams Electronics, new product developments of Williams Electronics.

MR. HANDLER: Mr. Nicastro, did you understand his questions to be directed to pinball machines?

THE WITNESS: I thought that we were talking about pinball machines.

MR. HANDLER: So did I, sir, and that's how we answered the question.

BY MR. KATZ:

Q Would your answers have been different if you hadn't understood my questions to be directed to pinball machines?

MR. GOLDENBERG: Objection.

MR. HANDLER: Objection to the form of the question.

It's my understanding that the subject matter of your litigation, sir, concerns pinball machines and those are the questions that the witness has endeavored to answered for you, and I just think that your question is improper.

I direct the witness not to answer your question in that form.

MR. KATZ: Read the last five or six questions.

(Whereupon, the record was read.)

BY MR. KATZ:

Q When I refer to "new product development," you indicated that you understood that to refer to pinball machines only; is that correct?

A Yes, sir.

Q Well, are you informed of new product developments of Williams other than pinball machines?

MR. HANDLER: Objection, direct the witness not to answer.

MR. GOLDENBERG: And I object to the question, unless it's directed to arcade games.

Nothing else is relevant.

Q New product developments relating to arcade games?

A No, sir.

MR. KATZ: Same answer?

MR. HANDLER: Yes.

MR. GOLDENBERG: Yes.

MR. HANDLER: Could we go off the record for a second, please?

I seem to be the only one who doesn't know what arcade games are in this room.

We're off the record.

(Discussion off the record.)

MR. KATZ: I want to stay on the record.

I think that that is improper.

MR. HANDLER: I inquired on the record -- I inquired off the record, but at Mr. Katz' insistence, he would like it to be on the record, there has been the use of the term "arcade games" between Mr. Goldenberg and Mr. Katz and I just want to get a definition on the record what an arcade game is.

MR. GOLDENBERG: Well, in the language of this case, an arcade game is -- includes

2 pinball games and other games, such as shuffle
3 or shooting or target games or video games
4 which appear in coin arcades, as certainly
5 distinguished from any gambling game.

6 MR. HANDLER: I see, thank you.

7 Q Is that your understanding of an arcade game,
8 in accordance with the answer that you gave, Mr. Nicastro?

9 A Yes, I think that I understand what he said,
0 yes, sir.

1 Q Do you have any different understanding of what
2 an arcade game is?

3 A To be very frank with you, I'm not very familiar
4 with what games are what.

5 You know, we have a very diversified company
6 and I'm not familiar with every type of hearing aid that
7 we make, nor am I acquainted with every type of arcade
8 device that is made, to be very honest with you.

9 Q Do you recall when you first became a member of
10 the Board of Directors of Williams Electronics, Incorporated?

11 A No, sir.

12 Q Was it prior to 1976?

13 MR. HANDLER: If you recall.

14 A I don't remember, sir.

15 Q Were you ever informed by anyone that Williams

Electronics was initiating work of any sort on a pinball machine employing some solid-state electronics?

A Yes, I was.

Q When was that, to the best of your recollection?

A Well, I can only tell you that Sam Stern was President of the company at the time and this had to be in the area of 1973-'74, forward.

Q 1973-'74 forward?

A ... Sometime during that period.

Q How were you so informed?

A I think that we had a management meeting at which time he indicated that there was a conversion from electro-mechanical to solid-state devices of some type.

Q That was Mr. Sam Stern; is that correct?

A Yes.

Q Do you recall when that meeting was?

A No, sir.

Q Were you on the Board of Directors of Williams Electronics at that time?

A I don't know.

If I were to guess --

MR. HANDLER: Don't guess.

THE WITNESS: Don't guess.

A (Continuing) All right, I would have to say

1 no.

2
3 Q Do you have a belief as to what time that was,
4 what year?

5 A No, sir.

6 Q Do you recall who was at that meeting?

7 A I guess we had meetings periodically, Mr. Katz,
8 and it would be all of our division heads, or managers.

9 Q How frequently were these meetings held, when
10 you say "periodically"?

11 A I would just guess every three months, every
12 four months.

13 Q Was Sam Stern usually at these meetings?

14 A Well, from '73 on, Sam Stern was President of the
15 entire company, what would now be Xcor International
16 Incorporated, so -- and chief operating officer, so he
17 would be certainly present at all of the meetings.

18 Q Do you know what work was being done in connection
19 with this solid state pinball game by Williams Electronics,
20 Inc. at that time, '73 --

21 A No, sir.

22 Q -- '74?

23 A No, sir.

24 Q Do you know who was the key individual or
25 prime mover in connection with that work that was being done?

2 Was it Sam Stern?

3 A I don't recall.

4 Q Do you know Gary Stern?

5 A Yes, I do.

6 Q Is that Sam Stern's son?

7 A Yes, it is.

8 Q Was he also employed by Williams Electronics?

9 A Yes, sir, he was.

0 Q Was he usually in attendance at those meetings?

.1 MR. HANDLER: What meetings, at what
12 period of time?

13 MR. KATZ: The management meetings during
14 '73 and forward.

15 A Not to my recollection.

16 Q During this period of time, '73, let's say,
17 '74, was the -- I'll call it a group so we don't get confused
18 on names, that manufactured and sold juke boxes, still a
19 part of the parent corporation?

20 MR. HANDLER: Objection, direct the witness
21 not to answer.

22 MR. KATZ: May I ask what the basis of
23 your objection is?

24 MR. HANDLER: I don't think that the matter
25 is properly discoverable in this litigation.

2 MR. KATZ: And on what basis?

3 MR. HANDLER: The basis is the Federal
4 rule which dictates what matter is discoverable
5 in civil litigation in the civil courts.

6 MR. KATZ: And you don't think that this
7 question is calculated reasonably to lead to
8 discoverable evidence?

9 MR. HANDLER: I think that you have my
10 position on the record.

11 I won't argue with you over that point
12 at this time, since I don't see a judge in
13 attendance who could rule.

14 BY MR. KATZ:

15 Q Were you informed in '73 and '74 as to the
16 activities of the organization within the company that
17 was manufacturing and selling juke boxes?

18 MR. HANDLER: Objection, same direction.

19 MR. KATZ: Do you refuse to answer the
20 questions that I have posed to you, Mr. Nicastro?

21 THE WITNESS: Upon instruction of counsel,
22 yes.

23 MR. HANDLER: If you would like to ask
24 specific questions which have anything to do with
25 the litigation that we are here to talk about,

2 I'm perfectly happy to have the witness answer,
3 but I will not have this witness testify about
4 activities of other subsidiaries, other than
5 Williams, or other divisions, other than Williams,
6 with respect to products other than the products
7 which are the subject of this litigation.

8 This is a highly diversified company
9 with many subsidiaries and divisions making all
10 kinds of products from hearing aids and vending
11 machines to band instruments, and I'm just
12 not going to have you waste this witness' time
13 questioning him about these unrelated matters.

14 Q Mr. Nicastro, did any other division of the
15 parent company ever work on pinball machines?

16 MR. HANDLER: When you say "work on", you
17 mean manufacture pinball machines?

18 MR. KATZ: Do any work in connection with
19 the manufacture, development or sale of pinball
20 machines.

21 THE WITNESS: Excuse me, Mr. Katz.

22 (Witness conferring with attorney.)

23 A Yes, the answer is yes.

24 Q What divisions were those?

25 A The Seeburg Product Division.

2 Q Any other divisions?

3 A Not to my knowledge, Mr. Katz.

4 Q Are you familiar with a Seeburg division by the
5 name of The Micro/Logic Systems Division?

6 A I think that there is a division of the company
7 called that.

8 Q Well, --

9 A I think that it's a department of Williams
10 Electronics.

11 Q Well, at the present time?

12 A To the best of my recollection, it always was,
13 but I may be mistaken.

14 Q I show you a document which was produced by
15 Williams' counsel under production number S-254 with an
16 indication that the "S" represented that it came from a
17 Seeburg file, and it's been marked as Plaintiff's BD 31.
18 in a prior deposition in this case, and ask you to take a
19 look at that document and the letterhead and logo and ask
20 if that refreshes your recollection with respect to another
21 Seeburg or another division of the company.

22 (Handing document to witness)

23 A It still doesn't refresh my recollection.

24 My recollection is that what it referred to
25 as a Seeburg Micro/Logic System Division, according to my

2 recollection, was always a department of Williams Electronics.

3 Q So to the best of your knowledge, the Seeburg
4 Micro/Logic System was a division of Williams Electronics?

5 A That was and is my understanding.

6 MR. HANDLER: Excuse me, he said "depart-
7 ment."

8 THE WITNESS: Department.

9 Q Excuse me, department?

10 A Right.

11 Q What do you mean by "department" as compared
12 to "division"?

13 A Well, "division" would be an entity unto itself,
14 and a "department" would be part of something else.

15 Q Now, I also direct your attention to the person
16 to whom this letter is addressed, which is a Mr. Cas
17 Dabrowski.

18 Do you know of a Mr. Cas Dabrowski?

19 A Yes, I know him.

20 Q And it states that his title is Section Engineer,
21 Music Systems of the Seeburg Products Division.

22 Is that another division or department, to the
23 best of your recollection, of Williams or of Seeburg?

24 A This is the first time that I have ever seen his
25 title, and he's an engineer, as far as I know, in the Seeburg

was an engineer and -- in the Seeburg Products Division.

Q Is the Seeburg Products Division located at 1500 North Dayton Street in Chicago, Illinois?

A It was as of that date, yes, sir.

MR. HANDLER: And by "that date," he's referring to the date on the document.

Q June 14th, 1976?

A Yes, right.

Q And is it still located there?

A Yes, but it's no longer a part of the company.

Q The Seeburg Products Division?

A Yes, it's no longer a part of Xcor International, Inc.

Q Is there still a Seeburg Micro/Logics division or department?

A I don't know.

Q Are you familiar with a Mr. Richard C. Atchley, A-t-c-h-l-e-y?

A Yes, sir.

Q How are you familiar with him?

A He was a former president and/or general manager of the Seeburg Products Division.

Q During what period, do you know?

A I don't remember.

Q Is he presently employed?

A No.

Q Do you know where he is presently employed now?

A No, sir.

Q How about Mr. Cas Dabrowski, is he still presently an employee of some division or group under Xcor International?

A No, sir, he's not an employee of Xcor International or a division or a subsidiary.

Q Okay. Do you know where he is now?

A Yes, I do.

Q Did he pass away?

A No.

Q He didn't?

A No.

Q Where is he employed?

A At The Seeburg Corporation at 1500 North Dayton Street, Chicago, Illinois.

Q That is not a subsidiary of Xcor International at the present time?

A That is correct.

Q Are you a principal owner -- principal shareholder of The Seeburg Corporation at 1500 North Dayton Street at the present time?

A No.

MR. HANDLER: I was going to object to that.

I have an objection to that question.

The witness has already answered it, so you have it subject to my objection.

THE WITNESS: Sorry.

Q Are you an officer of The Seeburg Corporation at 1500 North Dayton Street, either directly or beneficially?

MR. HANDLER: Objection, direct the witness not to answer.

MR. KATZ: Can I appropriately assume that when your counsel instructs you not to answer, you won't answer the question?

THE WITNESS: That is correct.

I pray that is good legal advice.

Q I show you a document, Mr. Nicastro, which was produced by Williams' counsel under production number W-540 and what appears to be a memo from someone with the initials "FM" to Louis J. Nicastro, bearing a date of April 15th, 1976, and ask you if you have ever seen the document before.

(Handing document to witness)

A

Yes, I saw this document last night.

Mr. Goldenberg and I were reviewing our deposition for today, and this is one of the documents that he produced and asked me if I remember seeing it, and I said since it has my name on it, I must have seen it, but I don't remember.

Q Did Mr. Goldenberg tell you anything else about that document?

A No, sir.

MR. GOLDENBERG: I object to that question.

Mr. Katz, you should know better.

MR. HANDLER: Are you pleased, Mr. Katz, that you managed to overreach the witness and get him to quickly answer your question in violation of the attorney/client privilege?

Does that give you a sense of professional accomplishment?

MR. KATZ: I don't think that that remark calls for a response.

MR. HANDLER: I think that your tactic is unfair.

BY MR. KATZ:

Q At this time in April of 1976, Mr. Nicastro, was there a usual practice in the company to provide memos to you concerning the subject of solid-state flipper games?

A If it was, it was highly irregular.

I don't remember receiving too many.

Q But you remember receiving some, though?

A No, I don't, sir.

Q Is it your testimony that you do remember receiving this, or you don't remember receiving this?

A No, as a matter of fact, until last night, if I had been asked had I received a memo bearing the initials "FM," on that subject, I would have probably said no.

Q Did you read the memo?

A Yes, I did.

Q Did it refresh your recollection as to whether you received it or not?

A I must have received it, it was addressed to me.

Q I see.

Do you know who the initials "FM" are?

A I can only guess Frank Murphy.

Q Were you generally familiar with the subject matter of this memo?

I'll let you read it again.

MR. GOLDENBERG: Mr. Katz, your question is indefinite as to time.

MR. HANDLER: Yes, I was going to raise the same question.

I assume that you mean at the time that the memo is dated?

MR. KATZ: At or about the time that it's dated, yes.

MR. HANDLER: Before you answer, Mr. Nicastro, I would like the Reporter to read back the question.

(Whereupon, the record was read)

A Yes.

Q What was that familiarity?

A The fact that I read what I read here.

You mean --

Q Did you know that these things were going on at or about the time that they were going on?

A Generally.

It was not my function to engage in matters of development like that.

It would be rare for anybody to contact me, and chances are, if I had received a memorandum like this, it would have probably been passed on to our chief operating officer.

Q Who was that?

A Jim Hughes.

Q Jim Hughes?

A James J. Hughes.

Q Is he still in that capacity now?

A No, he's President and chief operating officer.

Q Do you think that it would have been your practice to pass a memo like this to him?

A Yes.

Q Would it have been the practice at the time to take any action yourself with respect to a memo such as this?

A Probably not.

Q Does your reading of this memo, W-540, refresh your recollection at all as to whether you were on the Board of Directors of Williams Electronics, Inc. at this time, at or about April 15th, '76?

A No, it doesn't.

Q I show you a document that was produced by Williams' counsel with production number 878 which is a memorandum -- it appears to be a memorandum from Gary M. Stern to all of the Board of Directors of Williams Electronics, Inc., dated February 16th, '76, and I ask you -- it's the top document in the stack -- and I ask you if that document looks familiar to you.

(Handing document to witness)

A Unless Mr. Goldenberg showed me this last night,

I don't remember it.

Q But you don't have any recollection of it?

A No, sir.

Q Do you recall ever having a notebook given to you containing so-called solid-state reports from Sam Stern in connection with any activities of Williams?

A Not to my recollection.

Q Earlier in your testimony, you mentioned meetings with division heads that were held periodically from '73 and onward.

For how long a period did these meetings continue how many years, do you recall?

A I think that they continue to this day.

Q Are there minutes taken at those meetings?

A Well, not being at all meetings, I don't know.

Q When you're there?

A I don't recall ever having seen minutes taken by a secretary or anybody else, for that matter, at the meetings.

The best that might exist is that individuals might take notes.

MR. HANDLER: But you don't know about

that?

THE WITNESS: Pardon me?

MR. HANDLER: But you don't know about that?

THE WITNESS: No.

Q Have you ever taken notes at any such meetings?

A I never take notes.

Q Are you aware of reports or summaries that may be issued after the meetings relating to the subject matters discussed at the meetings?

A No, sir.

As I mentioned to you before, Mr. Katz, when I give some of these answers, they may seem vague to you.

My role with the company is essentially and substantially purely financially-related.

I mean, I don't get into product development, as I mentioned before; Qualitone, regarding hearing aids, or King regarding trumpets -- trombones or tubas or Choice Vend, whether it be bottling or can vending machines, so that, you know, for the record, I would like you to know that I'm trying to help you in any way that I can and not create an image of being vague on a lot of issues that I am not informed of and have not been made part of.

Q Do you have, Mr. Nicastro, any understanding at all of the subject matter of this particular lawsuit brought by Bally Manufacturing against Williams Electronics

and other companies?

MR. HANDLER: Objection, direct the witness not to answer in that form.

It's so vague and overbroad as to be impossible to answer.

I ask that you rephrase the question to be more specific so that we can give you a meaningful answer.

MR. KATZ: I think that he can give a meaningful answer.

The question merely called for a yes or no answer.

MR. HANDLER: Thank you for your observation, sir.

You have my objection on the record, you can rephrase the question.

MR. KATZ: Do you instruct the witness not to answer this question?

MR. HANDLER: Are you going to stand on the question on its present form?

MR. KATZ: I'll stand on the question.

MR. HANDLER: Then I direct the witness not to answer on its form.

You understand that this litigation brought by

Bally against Williams Electronics, Inc. and others, involves a patent?

A Patent what?

Q Involves a patent, a United States patent.

A I know that there is litigation existing on the matter of an alleged patent infringement.

Q By whom?

A We are the Defendants, amongst others in the litigation, with Bally being the Plaintiff.

Q Have you ever seen a copy of that patent?

A No, sir.

Q Have you ever had any conversations with anyone, other than your attorneys, with respect to this litigation?

A Yes, I think that I have.

Q What were those conversations?

A The conversation, I think, took place between the President of our company -- the now President, James J. Hughes, and myself, in which he indicated that in his opinion, that it was a phony suit and there was no merit to it, and that there was no patent infringement.

Q Did he indicate what the basis of his opinion was?

A No, I don't remember it, if he did.

When did that occur?

A I don't remember.

Q Do you recall when that conversation took place --

A No, sir.

Q -- relative to the date of the suit?

A Sometime after -- after the suit was filed.

Q And you don't recall how long after?

A No, I don't remember how long after.

It was probably after he consulted with counsel.

Q Was that conversation by telephone or in person?

MR. HANDLER: If you recall.

A I don't recall what, you know, how the conversation took place, Mr. Katz.

Chances are it took place in person.

Q In New York?

A . I don't remember.

Q Where is Mr. Hughes' office?

A At Oakwood, Illinois.

Q Did you ever have any other conversations concerning the litigation, other than this one, with anyone other than your counsel?

A After that conversation, I paid no attention to it.

Q Did you ever have any conversations with Bill O'Donnell of Bally, the President, concerning this

litigation?

MR. HANDLER: I would like to interpose an objection on the record and I would ask you, Mr. Katz, that we go off the record and I give you the basis of my objection off the record, and then if you would like me to put it on the record, I will be happy to do so.

MR. KATZ: Okay, we will be off the record.

(Discussion off the record.)

MR. KATZ: Withdraw that question.

Let me state a definite question.

BY MR. KATZ:

Q Did you ever have any conversations with Bill O'Donnell specifically concerning this deposition that you are giving?

A The one that we are at now?

Q Yes.

A Not to my recollection.

Q Did you ever have any conversations with anyone, other than your attorney, concerning the possible exposure that Williams Electronics, Inc. would face in connection with this litigation?

A I think that I indicated to you before, Mr. Katz, that based on my conversation with Mr. Hughes, that he felt

that there was no merit to the Bally lawsuit against Williams Electronics for patent infringement, thus, as far as I'm concerned, I would rely upon that.

Q What is your answer to the question, the specific question?

A Well, if you would like to read it back again, maybe I can tell you that.

MR. HANDLER: Read the question and answer, would you please?

(Whereupon, the record was read.)

Q Other than your conversation with Mr. Hughes?

A The answer is no, not to my recollection.

Q Did Mr. Hughes give you any -- or state any reasons for his opinions?

MR. HANDLER: Objection, asked and answered
I direct the witness not to answer the same question a second time.

Q Did you see any documents in connection with that conversation you had with Mr. Hughes relating to that subject?

A No, sir.

Q Did Mr. Hughes indicate that he had any documents in connection with the litigation?

A Not to my recollection.

2 Q Did Mr. Hughes indicate that he had received
3 any opinions from counsel with respect to the litigation?

4 MR. HANDLER: Objection, direct the witness
5 not to answer.

6 Q Have you ever sought any opinion of counsel
7 in connection with this litigation?

8 MR. HANDLER: Same direction, same objection,
9 same direction.

10 MR. KATZ: I'm not asking him what the
11 opinion was, I'm asking him if he ever saw such
12 an opinion.

13 MR. HANDLER: I'm directing him not to
14 answer.

15 MR. KATZ: May I ask what your grounds
16 are?

17 MR. HANDLER: I don't think that it's a
18 discoverable matter.

19 MR. KATZ: Whether he saw an opinion --

20 MR. HANDLER: That is correct.

21 MR. KATZ: -- with respect to this litigation?

22 MR. HANDLER: That is right.

23 Q Other than the conversation which you mentioned
24 with Mr. Hughes, did you have any conversations or discussions
25 with anyone, other than your counsel, concerning the validity

1 of the patent in suit? Nicastro

2 58

3 A Not to my recollection.

4 Q Are you aware of any activity on the part of
5 Xcor International or any of its subsidiaries or divisions
6 involving the design or development of a pinball machine
7 system which would avoid the patent in this litigation?

8 MR. GOLDENBERG: I object to that question.

9 MR. HANDLER: Just a minute.

10 Mr. Goldenberg, can you enlighten me, as
11 the counsel for the witness, what is the basis
12 for your objection so that I can make a
13 determination as to whether or not to permit
14 the witness to answer?

15 MR. GOLDENBERG: It simply is no dis-
16 coverable in this lawsuit.

17 The design plans of Williams Electronics
18 in no way are concerned with the validity of
19 the infringement of this patent.

20 MR. HANDLER: I see.

21 MR. KATZ: You're saying that as a state-
22 ment of fact?

23 MR. GOLDENBERG: What?

24 MR. KATZ: You're saying that, Mr.
25 Goldenberg, as a statement of fact?

3 MR. HANDLER: I hear him saying it as
4 a statement of law.

5 MR. GOLDENBERG: Yes.

6 MR. KATZ: That the design plans of
7 Williams are not related to the infringement
8 of this patent?

9 MR. GOLDENBERG: Correct, sir.

10 MR. KATZ: How do you know, sir?

11 MR. GOLDENBERG: I --

12 MR. HANDLER: All right, let's not argue,
13 fellows.

14 I'm just asking Mr. Goldenberg --

15 MR. KATZ: He is not the witness under
16 oath.

17 Mr. Goldenberg is not the witness.

18 MR. GOLDENBERG: I'm objecting to the
19 question.

20 MR. KATZ: Well, I didn't hear an objection.

21 MR. GOLDENBERG: Oh, yes.

22 MR. HANDLER: Mr. Katz, I think that the
23 record will show that Mr. Goldenberg interposed
24 an objection and I, as counsel for the witness,
25 asked him if he would please set forth the
basis of his objection so that I could make the

determination as to how to advise the witness whether to answer or not, and he was simply complying with my request for an explanation on the grounds of his objection.

He didn't mean to engage in any sort of a hostile interchange.

I've now heard Mr. Goldenberg's position. It sounds eminently reasonable to me, and based on that, I'll direct the witness not to answer the question.

MR. KATZ: I think that it is relevant to this case that if, by its conduct, Williams Electronics is actively redesigning or seeking to redesign to avoid the patent, I think that it would be highly relevant to the trier of fact in regard to its real view of the patent in this litigation.

MR. HANDLER: I can't ignore the fact, Mr. Katz, that your client is actively engaged in competing with Williams Electronics, and I'm sure would very much like to know what the future plans are for new product development Williams may care to embark on in the future with respect to pinball machine development.

I think that the record so far is clear that this witness plays no role in those activities in any event, but I'm not going to permit him to answer your question.

5 MR. KATZ: Well, you should know that I
7 did not inquire as to what those developments
8 were.

9 The question didn't go to that point. It
0 went to the question as to whether there were
11 such developments.

12 MR. GOLDENBERG: Mr. Katz, I think that
13 even the --

14 MR. KATZ: So I think that your objection
15 would be premature on that ground.

16 MR. GOLDENBERG: I think even the existence
17 of a plan or any information as to whether or
18 not there is one is objectionable for the reasons
19 that I stated.

20 MR. KATZ: Well, I think that the trier
21 of fact should be able to see this entire picture
22 in drawing its inference as to the patent in
23 suit and its merit.

24 MR. HANDLER: Well, in order to cut this
25 short, because we're interested in going forward,

without waiving my objection, I'll permit the witness to answer that question.

A Not to my knowledge.

Q Who would know?

A The person who might know would be the President of Williams, Michael Stroll.

Q Did you participate in any way in the hiring of Michael Stroll?

A Yes, I did.

Q How did you participate?

A Oh, it goes back, I think, Mr. Katz, to about -- I don't know, '74, '75, I think, when Mr. Stern resigned from the company and there was some preliminary work done by Mr. Stern with regard to engaging a company to do some work for us on the solid-state device of some kind, at which time I arranged to have a representative of National Semiconductor come in with a team of people, and at that time, I met Mr. Stroll for the first time and we worked out an arrangement whereby they were -- they would start some developmental work for us and I think that the chemistry between Mr. Stroll and myself were very good and we had some conversations about his becoming employed by the company which resulted in his employment.

Do you know when that employment took place?

2 A I don't remember precisely, Mr. Katz.

3 Q If I say October of '76, does that sound like --

4 A It could very well be that, I don't know.

5 Q What was Mr. Stroll's principal function when
6 he was hired?

7 A To develop a solid-state pinball device.

8 Q And had there been work done by Williams or
9 Seeburg on solid-state pinball devices beforehand?

10 A I can't tell you -- answer that question pre-
11 cisely, Mr. Katz.

12 I can tell you that on or about that same time,
13 I had discussions with Rockwell and with our then Seeburg
14 Products Division about the same subject.

15 Q And what were those discussions with the Seeburg
16 Products Division --

17 A Well, the work --

18 Q -- in general?

19 A As National Semi-Conductor did work for us in
20 trying to develop a solid-state device, as well as -- that
21 would apply to Rockwell, we employed Rockwell to do the
22 same thing.

23 Q At that time, did the Seeburg Products Division
24 employ engineers that had expertise in solid-state electronics?
25 I'm sorry, repeat that again?

3 Q At that time, did the Seeburg Products Division
4 employ engineers that had expertise in solid-state
electronics?

5 A I couldn't answer that question, I don't know.

6 Q Did they undertake such a development?

7 A Yes, they attempted at it.

8 Q Were they successful?

9 A To the best of my knowledge, no.

10 Q And you say that you discussed with Rockwell
11 the possibility of having them do a development?

12 A Yes.

13 Q And did they undertake such a development?

14 A Yes, to the best of my knowledge, we entered
15 into an agreement with them which resulted in them doing
16 some work for us.

17 Q And did they ever deliver any solid-state
18 pinball machine products to you as a result of that work?

19 A I believe that they did, but I'm not sure, Mr.
Katz.

20 Q How about National, did they ultimately deliver
21 solid-state pinball machine products to you, too?

22 A I think that is a possibility, yes, sir.

23 Q But you don't know for sure?

24 A No.

Q Was the Seeburg Products Division already doing work in solid-state electronics at that time?

A Relative to pinball machines?

Q Relative to anything.

MR. HANDLER: Objection, direct the witness not to answer the question in that form.

Q Let me limit it to pinball machines.

A Not to my knowledge.

Q Relative to any coin-operated machines?

MR. HANDLER: I'm directing the witness not to answer that question.

You're referring, as I understand your question, you're asking a question directed to their work in other than the pinball machine area?

MR. KATZ: Yes, generally to coin-operated machines.

MR. HANDLER: But other than pinball?

MR. KATZ: Yes.

Well, he already answered with respect to pinball machines.

MR. HANDLER: Yes, he did.

If you would like -- well, I'm going to object and direct him not to answer the

3 question in that form.

4 If you would like to ask him a follow-up
5 question with regard to arcade games, which I
6 think is a product that came up in this litigation,
7 you can put the question to him and he'll answer
it.

8 BY MR. KATZ:

9 Q Had the Seeburg Products Division at that time
10 done any work in solid-state systems for arcade games; by
11 that, I mean video games or other kind of arcade-type games.

12 A I understand the question, Mr. Katz.

13 I can't answer that specifically, but I can say
14 that at one time the Seeburg Products Division did assemble
15 a video-type game, but whether they did any developmental
16 work on the electro-mechanical or solid-state devices
17 on it, I couldn't tell you the answer to that as to whether
18 they bought the package or developed it.

19 Q Do you know of an engineer by the name of
Ray Macie?

20 A Macie, I know the name Macie. "Ray" I don't
know.

21 Q You don't know?

22 A I don't know him by his first name.

23 A I don't know what position that he had, if any,

24 A Do you know what position that he had, if any,

in the company?

A To the best of my knowledge, I don't think that he's employed by the company any more, but I'm not sure of that either.

Q Do you know if the Seeburg Products Division had done work with solid-state systems in connection with juke boxes at that time?

MR. HANDLER: I think the question is subject to the same objection.

I direct the witness not to answer.

MR. KATZ: And your objection is that it's not relevant?

MR. HANDLER: Yes.

MR. KATZ: Mr. Goldenberg, do you think that electronic control systems, solid-state control systems for juke boxes would be relevant to this suit?

MR. GOLDENBERG: It is our position that they are.

MR. KATZ: I think reasonably it's calculated to lead to admissible evidence.

I think that it's a reasonable area of inquiry in this litigation.

MR. GOLDENBERG: Well, is the work on

solid-state controls for juke boxes, is that relevant to the issues in this case?

MR. KATZ: It may be, yes.

MR. GOLDENBERG: All right.

MR. HANDLER: All right. Well, if you, Mr. Katz, and Mr. Goldenberg are in agreement, I'll permit the witness to answer.

THE WITNESS: Could you repeat the question, please, Mr. Katz?

MR. KATZ: Could you read the question back?

(Whereupon, the pending question was read)

A I can answer that question only by saying I believe that part of a juke box is solid-state, but what part that it is, I can't tell you, and what work that they did, I don't know.

And you're talking in terms of reference of 1976, too, aren't you, or are you talking about currently?

MR. HANDLER: No, I think that he was

talking about --

Q At the time that you went out with --

A With National, you mean?

Q -- with National and Rockwell and approached the Seeburg Products Division or that they indicated that

2 they would work on such a system for pinball machines.

3 A I think that the answer continues to be yes,
4 part of a juke box, to the best of my knowledge, which is
5 very little, leads me to believe that Seeburg was engaged
6 in some form of solid-state development work on juke boxes
7 as early as 1969.

8 Q And do you know if at that time the solid-state
9 components of the juke boxes involved microprocessors?

10 A I couldn't answer that question, I don't know.

11 Q Did you have any understanding as to what kind
12 of solid-state components were used in those juke boxes
13 at that time?

14 A No, sir.

15 Q What were the reasons for hiring Stroll to
16 design a solid-state pinball game at that time?

17 MR. GOLDENBERG: I object to the form of
18 that question as to its premise.

19 I don't think that you have accurately --

20 MR. HANDLER: Yes, I don't think there's
21 any -- I think that you do have -- you do have
22 a factual premise in your question which I
23 don't think has been laid through this witness,
24 so I'll object to the form of the question and --

25 MR. KATZ: Well, --

MR.HANDLER: -- and I ask you to rephrase it.

BY MR. KATZ:

Q Well, isn't it true that Michael Stroll was hired to design or manage the design of a solid-state pinball machine; isn't that generally what your testimony was earlier?

A Yes.

Q And what were the reasons for hiring him to do that?

A Well, because his predecessor had begun some work on that.

Q And that was Mr. Stern?

A Yes, right, and naturally, it had to be carried on in his absence.

Q Did you have any belief at that time as to why that work had to be carried on?

A If there were, Mr. Katz, and if I were informed of such, I don't remember.

Q Were you normally involved in the hiring of heads of divisions or subsidiaries at that time?

A Yes, generally I was involved in areas like that.

Q And then was your participation in the hiring

of Mr. Stroll one of your regular duties --

A Yes, sir.

Q -- at that time?

A Yes, sir.

Q Did you have occasion to meet with Mr. Stroll after he became employed by either Seeburg or Williams and when he came from National?

A I'm sure that I did, yes, sir.

Q And which company actually employed him, do you know?

A My recollection is Williams Electronics, but I could be mistaken.

Q It could have been Seeburg?

A It could have been -- yes, the predecessor to Xcor, right.

Q Do you remember what his title was when he was hired?

A No.

I think after we had negotiated the fact that he would come, I was involved with salaries and the terms and conditions of his employment, but beyond that, our chief operating officer would have taken him in hand and, you know, directed him in the direction that he wanted, you know, to work in and perform as, you know, the responsibilities

that he was hired for.

Q That was Mr. Hughes --

A Yes.

Q -- in Oakwood?

A Yes.

Q Did he regularly report to Mr. Hughes then --

A Yes.

Q -- rather than yourself?

A Yes, routinely, yes.

Q Did you ever have any discussions with him immediately after he was hired concerning the function that he was to play in the company?

A I think that it was explicit in his hiring why he was hired, I mean, that he was hired to help us develop a solid-state device for pinball machines.

Q And did his role and purpose extend to solid-state devices for other -- solid-state systems, I should say, for other types of products other than pinball machines?

MR. HANDLER: I think that question is too broad.

Why don't you break it down and maybe then he can answer it.

MR. KATZ: You understand the question?

THE WITNESS: I understand the question,

yes.

MR. KATZ: Would you let him answer the question?

MR. HANDLER: I think that it's too vague. I don't understand it.

BY MR. KATZ:

Q Was Mr. Stroll hired only for the implementation of solid-state games and pinball machines?

A When I hired him, yes.

Q Did he subsequently work on products other than pinball machines?

MR. HANDLER: You want to limit it to arcade games?

MR. KATZ: Let me say -- okay, limited to arcade games.

A To the best of my knowledge, after he completed his project on pinball machines, he worked on a shuffle alley.

It's a bowling device, an arcade piece.

Q Any other?

A Not to my knowledge.

Q Were you kept informed as to the progress of Mr. Stroll's work and development of a solid-state pinball machine by Williams?

A Yes, I'm certain that I was, through Jim Hughes.

I think that they established some target dates and things of that nature, and Jim would apprise me, either progress was slow or progress was fast or we're doing, you know, well or not well, things of that nature, yes, Mr. Katz.

Q Were you aware of the acquisition of any Bally solid-state pinball machines by Williams Electronics?

A By "acquisition" you mean --

Q Of pinball --

A The purchase of --

Q The purchasing or obtaining of Bally pinball machines -- solid-state pinball machines.

A No, sir; no, sir.

Q Were you aware of activity at Williams Electronics or at Seeburg Products Division relating to the examination and inspection of Bally solid-state pinball machines?

A No, sir.

Q Were the various considerations with respect to the design of a Williams solid-state pinball machine control system ever discussed with you by any of the personnel at Williams or Seeburg Products Division?

A I can only answer you that I don't know what

2 a control system is, so I would presume that in a general
3 sense, I was apprised that we're making progress or not
4 making progress in developing a solid-state device, but
5 specifically what they were doing, on a day-to-day basis,
6 I was not informed, nor did I inquire --

7 Q Were you ever --

8 A -- or how they did it.

9 Q Were you ever apprised by means of written
10 reports or letters or memoranda?

11 A If I have been, I don't recall it, except for
12 that memorandum that you showed me, you know, regarding
13 Frank Murphy's memo --

14 MR. HANDLER: But you don't know?

15 A (Continuing) -- but I don't have any recollection
16 and I didn't have any recollection of that, as a matter of
17 fact.

18 Q Did you have occasion to inspect a solid-state
19 pinball prototype at Williams?

20 A I'm certain, Mr. Katz, that during one of my
21 many visits to our division or subsidiaries and/or divisions,
22 and specifically Williams, that I am sure that they showed
23 me at one time or another a solid-state device.

24 Q Do you have any recollection of those occasions?

25 A No.

2 I mean, not specifically and, frankly, what I
3 saw was meaningless to me.

4 If somebody told me that that was an electro-
5 mechanical device and not a solid-state device, I would have
6 said, "That's great."

7 Q What was your recollection as to your information
8 concerning the progress or lack of progress of the project?

9 A In that respect, I think that we were all very
10 happy with the progress that Stroll had made.

11 Q And how about prior to the hiring of Stroll,
12 was there any concern for lack of progress?

13 A I don't recall being involved in anything that
14 led to that.

15 Mr. Stern would have been the man that would
16 have been directly involved with that, and it's one of the
17 things that he probably would not have talked to me about.

18 Q Do you recall considering the question of whether
19 Williams should proceed with any particular development,
20 the Rockwell development that you mentioned and the National
21 development, the product group, the Seeburg Product group
22 or some other development that Mr. Stroll would have wanted
23 to undertake?

24 A You probably won't believe this, but I don't
25 know which one that was selected in the final analysis.

2 Q But do you recall any discussions about going
3 with one proposal or another, or one development or another?

4 A I don't recall anybody discussing, you know,
5 the system with me.

6 . . . It was something that was beyond my experience
7 and something that I really didn't care about.

8 The end result was that we get involved in that
9 area, and to that extent, I got reports as to progress and
10 that was it.

11 Q Did you ever give your approval to entering
12 into any agreements with National Semi-Conductor or
13 the development or the manufacture of some prototype
14 solid-state pinball machines?

15 A Yes, I think that I told you that initially
16 that I instigated going with three groups, and that was
17 National, Rockwell and the Seeburg Products Division to
18 see what and who could develop the best system for us.

19 Q And is it true that you approved the agreement
20 with Rockwell and the agreement with National that was
21 eventually entered into?

22 A Yes, I think that that is fair to say, yes.

23 Q Do you have any recollection of a verbal report

24 that was made to you by Mr. Stroll regarding a comparison
25 of these various systems before he undertook further

2 developments shortly after he became employed?

3 A Not that I recall.

4 Q Do you recall any meeting with Mr. Stroll and
5 Mr. Hughes for the purpose of evaluating the work that
6 had been done by Mr. Stern or Williams on solid-state
7 pinball games up to the time shortly after Mr. Stroll
8 became employed?

9 A To the best of my knowledge, until Mr. Stroll
10 became employed, or, rather, we employed National Semi-
11 Conductor and Rockwell and the products division to start
12 developmental work, I don't know that we had any involvement
13 whatsoever.

14 Q Do you know that Mr. Stroll employed a group --
15 a new group called the "Advanced Development Team" at
16 Seeburg to work on a proposed new solid-state pinball
17 machine system for Williams?

18 A When you say "Seeburg", I don't know where he
19 housed his group or who employed them, but I urged him to
20 get a team of young men, beyond themselves, to facilitate
21 as quickly as possible this project, yes.

22 Q And do you know whether he did it?

23 A I'm sure that he did it.

24 Q Were you familiar with any of the people on that
25 team?



2 A I'm certain from time to time, Mr. Katz, that
3 I have met them and I would recognize most of them by their
4 face, but beyond that, if I were to meet most of them today,
5 I wouldn't know them by name.

6 Q Now, prior to his getting this group together,
7 do you recall having a meeting with you or you and Mr.
8 Hughes, concerning an evaluation of work done before by
9 either National, Rockwell or the Seeburg products group
10 relating to solid-state pinball machines?

11 A No, except for their expertise in those areas.
12 They were widely-known companies that had to be
13 experts in solid-state devices, starting with wristwatches,
14 I think.

15 Q No, I think that my question goes to whether you
16 had a meeting with Stroll with respect to the evaluation
17 of this work that you had initiated earlier with Rockwell
18 and National.

19 MR. HANDLER: Mr. Katz, I think that you
20 have asked that question at least twice before,
21 and I think that the witness' answer on the
22 prior occasion was that he did not recall.

23 MR. KATZ: Well, I just wanted to make it
24 clear by trying to refresh his recollection with
25 respect to other facts.

2 MR. HANDLER: Well, I think that your
3 question is approximately the same, and I think
4 that we'll stand on the record as it stands.

5 BY MR. KATZ:

6 Q Do you recall, Mr. Nicastro, the display of
7 a number of solid-state pinball machines at the Continental
8 Plaza during one of the MOA shows in Chicago?

9 MR. HANDLER: The display by Williams?

10 MR. KATZ: By Williams or Seeburg, I don't
11 know who was actually displaying it, or Xcor
12 International, but one of the companies, and
13 presumably, you know, Williams or this group.

14 A Mr. Katz, I don't remember whether it was in
15 conjunction with a MOA meeting or not, but I know that
16 there was a distributor meeting at which time we displayed,
17 at one time or another to our distributors, certain of our
18 newly-developed machines.

19 Q Do you remember what machine it was?

20 A No, I don't.

21 Q Do you remember whether you ever displayed the
22 machines that were the result or the development work of
23 Rockwell --

24 A I don't know what machines they showed.

25 Q -- or National?

2 A I don't know which machines they showed.

3 Q Mr. Nicastro, in connection with this deposition,
4 a subpoena duces tecum was served upon you which has now
5 been marked Plaintiff's Exhibit BD 43, and service on your
6 behalf was accepted by your attorney, Arthur Handler.

7 That subpoena requested that you bring with you
8 certain documents and things that were set out in an
9 annexed attachment to this subpoena.

10 Did you bring any documents with you to this
11 deposition?

12 A No, sir.

13 Q Did you read this subpoena and attachment?

14 A Yes, sir.

15 Q Did you consider the documents that were
16 requested?

17 A Yes, sir.

18 Q Did you search or attempt to locate any documents
19 requested?

20 A Yes, sir.

21 Q And did you find any such documents?

22 A No, sir.

23 MR. KATZ: Let's take a few minutes
24 recess. I'm almost finished.

25 (Whereupon, a recess was taken)

6

2 BY MR. KATZ:

3 Q I would like to show you some documents that have
4 been produced by Williams' counsel.

5 The first set of documents were produced under
6 Nos. W-501 through W-505, and have attached to them on
7 document W-501, what appears to be a memo from a Mr. Don
8 Wallach to Louis J. Nicastro, dated August 16th, 1976,
9 Subject: National Semi-Conductor, and I ask you to take
10 a look at these documents and see if you are familiar
11 with them.

12 (Handing documents to witness)

13 A The poor guy is dead, by the way.

14 Q Who is that?

15 A Don Wallach. A 38-year-old attorney died
16 of a heart attack.

17 He was our general counsel.

18 THE WITNESS: Off the record?

19 MR. KATZ: Off the record.

20 (Discussion off the record.)

21 Q Do you recall seeing these documents before?

22 A It's possible, Mr. Katz.

23 Q Do you have any recollection of --

24 A At this point in time, no.

25 Q Do you recall a contractual dispute that arose

2 with National Semi-Conductor?

3 A Vaguely.

4 Q And to what extent do you recall it?

5 A I don't recall the specifics.

6 Q Do you recall it in general, what the general
7 substance of the dispute was?

8 A No, you would have to know Don Wallach.

9 He was in a fight with the world, and half of the
10 time he was concocting memorandums that would be so volumi-
11 nous that if you had time to read them, you did nothing
12 else.

13 Q Let me show you another set of documents pro-
14 duced by Williams' counsel under production numbers W-850
15 through W-854 and which appear to be correspondence from
16 Rockwell International addressed to Louis J. Nicastro,
17 dated August 19th, 1976; Subject: Electronic pinball
18 game controller, and reference, Williams/Rockwell meeting,
19 August 16th, 1976, and I hand you these documents and
20 ask you if you have seen those documents before.

21 (Handing documents to witness)

22 A I have to answer it the same way.

23 I don't recall having seen them --

24 Q Do you have --

25 A -- although it's addressed to me.

2 Q Do you have any reason to believe that you didn't
3 receive that?

4 A No, I have no reason at all not to believe
5 I received it, I just don't recall.

6 Q Do you recall having a meeting with the Rockwell
7 people concerning the design of the Rockwell solid-state
8 pinball prototype games?

9 A No, not with regard to a design and not with
10 regard to purchasing any quantity of components, but merely
11 to employ them, as I did National Semi-Conductor and as I
12 instructed the product division to proceed and try to do
13 what they could to expedite a solid-state system.

14 Q Who was in charge at that time of actually
15 dealing with the technical nature of this subject matter?

16 A It would seem to me that the person that
17 probably would be in the company would be Jim Hughes, as
18 chief -- I don't know if he was chief operating officer
19 at the time, but as executive vice president -- he could
20 have been chief operating officer at that time, but I'm
21 not sure.

22 He probably would be directing the shots,
23 because at that time, there was no literal head, president,
24 of Williams Electronics.

25 Q This was after Mr. Stern had left --

2 A Right.

3 Q -- and you didn't have anybody running it?

4 A Yes, right, and, you know, you had each depart-
5 ment head, manufacturing, engineering, sales, et cetera,
6 they functioned as a team until we found a suitable replace-
7 ment who ultimately became Michael Stroll.

8 Q And this also would have been true with respect
9 to the document W-501, relating to the National Semi-Conductor
10 project also; is that correct?

11 A This is not -- this is just a matter of my
12 own personal technique, Mr. Katz.

13 If they're in an area like that, okay, and
14 Mr. Hughes was not copied, I would undoubtedly send a
15 memorandum on down to Hughes -- "For your information,
16 look into the matter," or some such comment like that,
17 and leave it at that.

18 Q What was Mr. Murphy's function in this develop-
19 ment at that time?

20 A Mr. Murphy is a man of about 70 years of age
21 and I think that his -- with all due respect, his contribution
22 to that area probably would be minimal because he was an
23 architect of the development of, you know, the past history
24 of electronics in the electro-mechanical, and my guess is
25 that he could contribute very little, although he had the

2 title of chief engineer.

3 As a matter of fact, I think that -- I think
4 that all of the old people just knew of the old technology,
5 and this is the new technology, and if they had known
6 something about it, they wouldn't have hired Mike Stroll,
7 and that is just my recollection of the circumstances.

8 Q How about Mr. R.W. Babb, B-a-b-b, are you
9 familiar with him?

10 A He was purely an accountant.

11 Q He was an accountant?

12 A Right.

13 Q Now, I would like to show you another document
14 which was produced by Williams' counsel with production
15 Nos. W-593 through 595, which appears to be a status
16 report on solid-state pin game development from Frank
17 Murphy to Messrs. L.J. Nicastro and J. Hughes, dated
18 September 3, 1976, and I ask you if you recall having
19 seen that document before.

20 (Handing document to witness)

21 MR. HANDLER: I think in the interest
22 of completely identifying the document, in
23 addition to being sent to L.J. Nicastro and
24 J. Hughes, there is an indication that it
25 also went to a list of people on the right side

2 of the document, seven people.

3 MR. KATZ: Right.

4 MR. HANDLER: It's addressed to --

5 MR. KATZ: Right, J. Mittel --

6 MR. HANDLER: It's addressed to --

7 MR. KATZ: Yes, those were carbon copies
8 apparently indicated to Messrs. J. Mittel,
9 R. Babb, J. Masterson, M-a-s-t-e-r-s-o-n,
10 C. Otis, A. Gregg, G-r-e-g-g, S. Korkek, K-o-r-
11 d-e-k and R. Macie, M-a-c-i-e.

12 A Somehow, I have a recollection that I have seen
13 and read this, yes.

14 Q Do you recall any action that you took in
15 connection with reading this memorandum?

16 A No, Mr. Katz, but as I indicated to you before,
17 whatever action would have been taken, would have been
18 taken either by the division head, by Stroll and Hughes,
19 and if it related to a policy matter of some kind, then
20 I would be injected in or included into the conversations.

21 Q Did this involve a policy matter?

22 After reading this memo, does that refresh your
23 recollection as to whether this related to a policy matter?

24 A I don't recall.

25 I have a vague recollection of seeing that

2 memorandum, but I don't recall what ensued thereafter, I
3 mean, if I had a reaction to it or not, or if there was
4 a meeting about it or not, or any instructions were given
5 or not.

6 Q Do you know what occasioned Mr. Murphy to
7 prepare this status report?

8 A No, sir.

9 Q Who was Mr. J. Mittel, do you know who --

10 A He's in charge of sales.

11 Q For Williams Electronics?

12 A Yes.

13 Q Mr. J. Masterson?

14 A He's in charge of manufacturing.

15 Q For Williams Electronics?

16 A For Williams -- this is all for Williams
17 Electronics.

18 Q All right.

19 Q Are these people still there?

20 A Mittel is there, Masterson is there, I know
21 that.

22 Q C. Otis?

23 A I know the name, but I don't know the person.

24 Q A. Gregg, G-r-e-g-g?

25 A I don't think that he's there.

2 I'm sure that he's not there.

3 Q S. Kordek, K-o-r-d-e-k?

4 A Yes, I know him. Steve Kordek, yes.

5 Q Is he there?

6 A Yes.

7 Q And what is his function?

8 A He is principally a design engineer, I mean
9 design of play fields.

10 Q He's a play field designer --

11 A Yes.

12 Q -- game designer?

13 A Yes, I call him that.

14 I think he calls himself an engineer, but he's
15 a play field designer.

16 Q And Mr. R. Macie?

17 A I don't know what he did.

18 Q Earlier in your testimony, Mr. Nicastro, I
19 believe that you indicated that you were interested in
20 getting some sort of solid-state or electronic pinball
21 game as soon as possible at that time.

22 What was the reason for that?

23 MR. HANDLER: Now, just a minute.

24 I'm going to object to your characterizing
25 the witness' prior testimony.

2 MR. KATZ: He said yes, that --

3 MR. HANDLER: Now, just a minute, sir.

4 If he testified to something, the Reporter
5 has it down.

6 Now, I'm going to object to the form of
7 your question.

8 MR. KATZ: I was just laying a basis for
9 a further question, that is why I was restating
10 or attempting -- I don't want to mischaracterize
11 your testimony, so if that is not true, tell
12 me --

13 MR. HANDLER: Well, --

14 MR. KATZ: -- but I thought that it was
15 true.

16 MR. HANDLER: No, I'm not going to have
17 him tell you.

18 It's on the record, what he told you.

19 MR. KATZ: Well, he had already answered --

20 MR. HANDLER: No, he did not.

21 MR. KATZ: -- he said "Yes."

22 MR. HANDLER: No, he did not.

23 MR. KATZ: Did you say "Yes," Mr. Nicastro?

24 MR. HANDLER: No, he did not.

25 I direct him not to answer your question.

2 If you want to put a question to him,
3 put it.

4 I don't want any argument from you or the
5 witness.

6 MR. KATZ: Did the Reporter get his answer
7 "Yes"?

8 THE REPORTER: No.

9 MR. HANDLER: No, and I didn't hear it,
10 I didn't hear it.

11 MR. KATZ: Well, I saw it.

12 THE WITNESS: Do you want to go off the
13 record and I'll tell you what the fight is?

14 MR. KATZ: No, I would like to have it
15 on the record.

16 MR. HANDLER: I want to stay on the record
17 also, and I object to your mischaracterizing
18 the witness' prior testimony.

19 BY MR. KATZ:

20 Q. Did you testify earlier that you wanted to have
21 an electronic or solid-state pinball game as soon as
22 possible?

23 MR. HANDLER: Objection, direct the
24 witness not to answer.

25 If he testified to it before, then you have

1 Nicastro

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2 his testimony on the record.

3 We're not going to have you engage in
4 a guessing game with him as to what's on the
5 record.

6 BY MR. KATZ:

7 Q Did you want get an electronic pinball or
8 solid-state pinball game as soon as possible?

9 MR. HANDLER: At what point in time,
10 sir?

11 MR. KATZ: At this point in time that
12 we're talking about --

13 MR. HANDLER: Which is what?

14 MR. KATZ: -- September '76 -- the fall of
15 '76.

16 A -- I think, Mr. Katz, that I reported to you before
17 that Mr. Stern had started some work, okay, in trying to
18 engage somebody to do some solid-state work for us, and
19 what I was trying to do, in his absence, is fill a breach
20 by concluding something with somebody so that we could get
21 a solid-state device eventually, yes.

22 Q Were you interested in getting it eventually
23 or getting it as soon as you could get it?

24 A From a marketing viewpoint, I think that it would
25 be fair to say that we would like to get it as soon as we

2 can get it.

3 Q Okay, and why was that?

4 A Just to have a market advantage on any new
5 device.

6 Q Did you think that that would provide you with
7 a marketing advantage?

8 A If you're asking me, I don't know.

9 The people at Williams probably could answer
10 you better.

11 Q Did you have any understanding or idea at that
12 time as to where your company was relative to other
13 companies in the pinball field with respect to the develop-
14 ment of solid-state pinball games?

15 A No, -- the answer is no, I didn't know that,
16 but I can always tell you that -- I could tell you that Mr.
17 Stern constantly told me "We're the largest manufacturer
18 of pinball machines in the world" and later on I found that
19 to be untrue.

20 Q Did he tell you that you should be getting
21 into solid-state pinball games?

22 A Yes, I told you he initiated a project with
23 Rockwell prior to his departure.

24 Q What did -- was that a prevailing view, to your
25 knowledge, at Williams or were there other people that held

1 Nicastro

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2 contrary views?

3 MR. HANDLER: "Was what a prevailing
4 view?"

5 MR. KATZ: That you should go into solid-
6 state pinball machines.

7 A I couldn't answer that, because I didn't discuss
8 it with other people.

9 Q In this memo from Frank Murphy to you and Mr.
10 Hughes, dated September 3, 1976, on Page Three, which is
11 document production No. W-595, there is a statement,

12 "We understand that certain phases or ideas
13 are being covered (patented) but we are not sure what these
14 items are or what value they may have in pin game."

15 "Seeburg also seems reluctant to be specific
16 with us in technical matters."

17 First, with respect to -- I'll show you the
18 document.

19 This is the part that I am referring to
20 (indicating).

21 Do you know what phases or ideas were being
22 covered or patented at that time that was being discussed
23 by Mr. Murphy?

24 A No, sir.

25 Q I show you another document that has been

2 produced by Williams' counsel with production No. W-542
3 which appears to be a memo from Mr. Wallach to you, dated
4 November 3, 1976, and showing the subject: National
5 Semi-Conductor, and ask you if you recall seeing that
6 document.

7 (Handing document to witness)

8 A The only thing that I remember about this
9 memo is Mr. Kvamme's name.

10 Beyond that, I don't remember anything about
11 that.

12 Q And who do you remember him to be?

13 A Somebody connected with National Semi-Conductor,
14 and I think that I met with him.

15 Q And was that primarily in connection with the
16 financial aspects of the program?

17 A Yes, that was the principal reason for my
18 involvement, yes, sir.

19 Q With respect to the solid-state portion of
20 juke box controls, which you testified about earlier,
21 who in this time period, when you were going out working
22 with National and Rockwell and so on in the fall of '76,
23 was in charge of that work at Seeburg?

24 MR. HANDLER: Excuse me, Mr. Katz.

25 I would like you to read back the question,

1 because I think that the first part of that
2 question is objectionable.

3 The introduction, I think, is objectionable.

4 MR. KATZ: Okay.

5 (Whereupon, the pending question was read)

6 MR. HANDLER: He didn't testify that the
7 solid-state had to do with juke box controls.

8 MR. KATZ: I think that he did.--

9 MR. HANDLER: He said --

10 MR. WELSH: Yes.

11 MR. KATZ: -- but I won't argue with you
12 about it; I'll rephrase the question.

13 THE WITNESS: Hold on.

14 Mr. Welsh has notes on it.

15 MR. WELSH: I recall that he did, but

16 Mr. Katz will rephrase the question.

17 MR. HANDLER: I have an excellent memory

18 and you didn't use the word "controls."

19 BY MR. KATZ:

20 Q Who was in charge of the solid-state components
21 or devices that were used in the juke boxes at Seeburg
22 during this period of the fall of '76?

23 A I don't understand the question, Mr. Katz.

24 Q What don't you understand?

25

A . . . I don't understand what you are talking about, what components of solid-state controls, because I think that I testified to is that Seeburg had engaged, in 1969, in the development of some solid-state device of some kind --

Q Oh, yes.

A -- that related to juke boxes.

What precisely that device did or did not do, I don't know.

Q And who was in charge of that, do you know?

A In 1969, I don't know.

Q Who would know?

A I think any one of the engineers at Seeburg.

Q And who would those people be?

A Cas Dabrowski is one of the names that I mentioned,

I think that he would know.

Q And he still, as you testified, is at the Seeburg Division -- The Seeburg Corporation, the new Seeburg Corporation --

A Yes, sir, to the best of my knowledge.

Things change very rapidly there.

Q -- on North Dayton Street?

A Yes.

Q Who is presently in charge as the chief operating

2 officer or president of that Seeburg Corporation on
3 North Dayton Street at the present time?

4 MR. HANDLER: Just a minute.

5 I think that the witness testified that
6 that is not a company which is owned by
7 Xcor, the parent of Williams.

8 MR. KATZ: That doesn't mean that he
9 doesn't have knowledge of that.

10 MR. HANDLER: I don't see what the
11 relevance is.

12 MR. KATZ: We may want to inquire with
13 respect to relevant subject matters that
14 occurred there.

15 I believe some of the documents may have
16 come from that company.

17 MR. GOLDENBERG: Mr. Katz, if you have
18 any questions about The Seeburg Corporation or --
19 I suggest that you -- in connection with this
20 lawsuit and work that that company or some
21 predecessor of that company may have done, I
22 suggest that you put them to me and I'll make
23 inquiries as to who might have knowledge of
24 the specific topics in which you're interested
25 and whether or not they are still there.

2 MR. KATZ: Well, our past endeavors in
3 that regard have turned up little, if any, and
4 sometimes misleading --

5 MR. GOLDENBERG: Oh, Mr. Katz --

6 MR. KATZ: -- an explanation, so I would
7 rather address the witness who probably knows
8 the answer to this question.

9 MR. GOLDENBERG: Mr. Katz, this is
10 really very silly.

11 Voluntarily -- voluntarily, although we
12 had no obligation to do it on our behalf, we
13 went to that company and obtained files and
14 documents and all of the "S" documents that
15 you have seen and that you have reference to
16 came from that company and they were produced
17 with our cooperation and help.

18 MR. KATZ: And that's why I think that
19 it's preposterous and ludicrous for anyone here
20 to take the position that an inquiry with
21 respect to who is in charge of that company
22 is irrelevant to this case --

23 MR. GOLDENBERG: Well, --

24 MR. KATZ: -- and we have files from that
25 company that were produced by you, and I think

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that it's --

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MR. GOLDENBERG: It's irrelevant to the examination of this witness and taking his time.

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If you have any specific inquiries with respect to that company --

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MR. KATZ: I have a specific inquiry --

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MR. HANDLER: I --

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MR. GOLDENBERG: -- I suggest that the most efficient way to do that is to deal through us.

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MR. KATZ: I suggest that the most efficient way right now is to get the witness to answer that single question.

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(Continued on following page)

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2 MR. HANDLER: What is your question,
3
4 sir?

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6 MR. KATZ: Read my question that started
7
8 this colloquy.

9 (Whereupon, the pending question was read)

10 MR. KATZ: Do you know the answer to that?

11 A To the best of my knowledge, it's John Chapin.

12 MR. KATZ: Thank you.

13 Okay, I have no more questions.

14 (Whereupon, at 1:35 o'clock P.M., the
15 examination was concluded.)

16 Subscribed and sworn to
17 before me this day
18 of , 1979.
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20 Notary Public
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I N D E X

1 Witness
2 LOUIS J. NICASTRO
3

4 By Mr. Katz
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6 Page

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12 E X H I B I T S
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